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STATE OF NEW HAMPSHIRE  
WATER COUNCIL

DEC 18 2003

03-20 WC

NOTICE OF APPEAL BY GOVERNOR'S ISLAND CLUB, INC.  
FROM DECISION OF COMMISSIONER OF DEPARTMENT OF  
ENVIRONMENTAL SERVICES AND  
REQUEST FOR WAIVER OF RULES RELATIVE TO TIME FOR  
FILING THIS APPEAL

Now comes Governor's Island Club, Inc., a New Hampshire Corporation with a mailing address of P.O. Box 7165, Gilford, New Hampshire 03249, and represents as follows:

1. Steven J. Smith & Associates, Inc., as its agent filed a Request for Variance under the Comprehensive Shoreland Protection Act with the Shoreland Coordinator, NHDES on August 28, 2003, with respect to its property on Brook Road in Gilford, bordering Lake Winnepesaukee, and identified on Gilford Tax Map 221, Lot 014. Application attached.

2. The purpose of the Variance was to permit improvement to a drop off zone and turn-around in Brook Road which provides access to a community beach which owners of Governor's Island have deeded easements to use.

3. Brook Road is a narrow gravel road which has been in its present location for approximately 70 years.

4. Creation of a turn-around area would avoid the need for motorists backing out on Brook Road a distance of approximately 90 feet. Plan attached.

5. DES Commissioner denied the variance on October 16, 2003. A copy of Denial with Findings was received by Steven J. Smith & Associates, Inc., on October 20, 2003, and is attached.

6. Governor's Island Club filed a Motion For Reconsideration of Denial of Variance and Request For Administrative Hearing With Notice to All Abutters with the Commissioner of DES on October 24, 2003. Copy attached.

7. In a telephone conversation on December 11, 2003, DES Attorney Mark Harbaugh advised that Governor's Island Club's Motion For Reconsideration, etc. had recently been brought to his attention, that no action had been taken by the Department, that an appeal should be filed with the Water Council with a request to waive the delayed filing of a notice of appeal due to the fact

that the Department had made no response to the Motion For Reconsideration. He further advised the Department would not object to the request for waiver.

8. Lack of any response from the Department within the appeal period constitutes good cause for granting a waiver.

WHEREFORE, Governor's Island Club, Inc., respectfully requests as follows:

A. Its request for waiver of delay in filing this Notice of Appeal be granted;

B. Denial of its Request for Variance be set aside for the reasons set forth at length in its Motion For Reconsideration, etc, and that the variance be granted to permit the improvement of the drop off zone and turn-around as shown on plans submitted as a part of its request for variance.

C. That the Department's entire file with reference to the Request for variance with plans previously submitted, and other documents be filed with the Council, as well as a record of all its actions on the request.

D. That a hearing be scheduled to permit introduction and consideration of evidence to support the granting of the variance requested.

E. That the Council grant the variance in that the improvement of the drop off zone and turn-around will not adversely affect the shoreland of Lake Winnepesaukee at the location in issue, will not materially affect the natural state of the lot, will conserve a long established access to the lake, will benefit public safety in eliminating a safety hazard for persons and vehicles, private as well as emergency, if needed, using Brook Road and the Community Beach, and will have no adverse affect on the value of abutting properties.

F. And such further relief as may be warranted after submission of evidence and testimony to the Water Council.

Respectfully submitted,

Governor's Island Club, Inc.

BY: Robert F. Bowen

Robert F. Bowen, President  
P.O. Box 7165  
Gilford, NH 03249

December 17, 2003

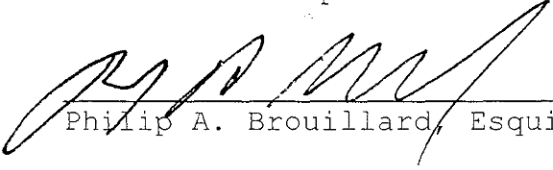
Brouillard & Brouillard P.L.L.C.

BY: 

Its Attorneys  
Philip A. Brouillard, Esquire  
16 Academy Street  
Laconia, NH 03246

Copies of this Notice of Appeal have this day been mailed to the Commissioner of the Department of Environmental Services, and the Director of the Water Division of the Department of Environmental Services.

December 17, 2003

  
Philip A. Brouillard, Esquire

C:\Documents and Settings\Owner\My Documents\Pleadings\General\Water Council.wpd



**Comprehensive Shoreland  
Protection Act**  
Request for Variance  
RSA 483-B

Shoreland Coordinator, NHDES  
Water Division  
PO Box 95,  
Concord, NH 03302-0095  
Phone: (603) 271-2147  
Fax: (603) 271-6588  
<http://www.des.state.nh.us/cspa>  
[wetmail@des.state.nh.us](mailto:wetmail@des.state.nh.us)

**Return this form to:**

**Env-Ws 1407.03 Local Notification.** Each applicant for a variance shall submit a copy of the information required by Env-Ws 1407.02 to the local governing body, at the time of submittal to the department.  
(see Env-Ws 1407 of the Shoreland Protection Administrative Rules for more information)

**Owner Name:** Governor's Island Club  
Last First Middle

**Mailing Address** PO Box 7165 Gilford NH 03249  
Address Town/City State Zip

**Communication** 366-5775 (Robert Bowen)  
Telephone Fax Email

**Applicant**

**Name:** Steven J. Smith & Associates, Inc.  
If different from owner Last First Middle

**Mailing Address** 6 Lily Pond Road Gilford NH 03249  
Address Town/City State Zip

**Communication** 524-1468 524-4731 sjs@sjsincnh.com  
Telephone Fax Email

**Project**

**Location:** Brook Road, Governor's Island Gilford, NH 03249  
Street Town/City

**Tax Map:** 221 **Lot Number:** 014 **Block Number:** 000

**Waterbody Name:** Lake Winnepesaukee

June 25, 2003

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AUG 28 2003

ENVIRONMENTAL SERVICES  
WETLANDS BUREAU  
93-1894

Department of Environmental Services, Water Division, PO Box 95, Concord, NH 03302  
Shoreland Protection Variance Application

**Description of Proposed Variance:**

Variance is sought from which section of The Comprehensive Shoreland Protection Act?

Example: RSA 483-B: 9 II. (b)

RSA 483-B:II(b)

State the requirement of that section.

Example: Primary structures shall be set back behind the primary building line which is 50 feet from the reference line.

Primary Structures  
Setback 50' from  
Reference Line

To what degree can this project nearly meet the existing requirement?

Example: Primary structure can only be 40 feet from the reference line.

We can only maintain  
20' from reference line  
with drop off/turnaround

**Justification for a Variance:**

The granting of variances to the Comprehensive Shoreland Protection Act is subject to the same criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b):

**Please address all of the following 5 requirements:**

**1. Denial of variance would result in unnecessary hardship:**

The existing gravel access road to the community beach is narrow and requires patrons to back causing a safety hazard which would be eliminated with the proposed improvements for a turn-around

**2. No diminution in value of surrounding properties would occur:**

The use currently exist; by allowing improvement will only provide safe use of the existing access road and enhance property values.

**3. Proposed use would not be contrary to spirit of ordinance:**

The proposed activity is associated with an existing beach and existing access road. Proposed improvements are the minimum required to provide safe use of the facility.

June 25, 2003

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AUG 28 2003

ENVIRONMENTAL SERVICES  
WETLANDS BUREAU

Department of Environmental Services, Water Division, PO Box 95, Concord, NH 03302  
**Shoreland Protection Variance Application**

**4. Granting variance would benefit public interest:**

The proposed improvements will provide an element of safety which currently does not exist, which will benefit both the user and the general public.

**5. Granting variance would do substantial justice:**

By granting this variance the owners will be allowed reasonable use of the community beach in a safe and orderly manner.

**Required Signatures:**

All signatures must be in black ink:

Owner's signature acknowledges agreement and consent to this variance.

Owner: Robert Bowen, Director Governor's Date: 8-26-03  
Owner (typed): Island Club

Owner: Robert Bowen President Date: 8/26/03  
Owner (typed): [Signature]

Applicant: Steven J. Smith Sr. LLS Date: 8-26-03  
Applicant (typed): Steven J. Smith & Assoc., Inc.

**RECEIVED**

AUG 28 2003

ENVIRONMENTAL SERVICES  
WETLANDS BUREAU

June 25, 2003

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Department of Environmental Services, Water Division, PO Box 95, Concord, NH 03302  
Shoreland Protection Variance Application

OFFICIAL OFFICE USE ONLY

RSA 483-B Variance Approval/Denial

Rule/Section for which variance is being sought:

Number:

Rule/Section requirement:



The Variance is Denied See Findings set forth in Attachment I.



The Variance is granted based on the facts presented in the attachments provided by the owner or applicant. This variance is approved with the following conditions:

Does applicant satisfy each of the five requirements for approval:

1. Would denial of variance result in unnecessary hardship?

Yes ☐

No ☒

2. Granting the variance would benefit the public interest?

Yes ☐

No ☒

3. Granting the variance would do substantial justice?

Yes ☐

No ☒

4. The proposed use does not diminish the value of surrounding properties?

Yes ☐

No ☒

5. The proposed use is not contrary to the spirit of the Act?

Yes ☐

No ☒

In order to approve the variance, questions 1-5 must be answered "yes".

Approved

Date: \_\_\_\_\_

Michael P. Nolin, Commissioner

Denied

Michael P. Nolin, Commissioner

Date: 10 16 03

June 25, 2003

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**ATTACHMENT I**  
**VARIANCE DENIED**

**FINDINGS**

**Governor's Island Club**  
**Lake Winnepesaukee**  
**Tax Map 221, Lot No. 014, Block No. 000**  
**Brook Road**  
**Gilford NH**

1. The Governor's Island Club has used this property as access to the beach for 70 years. The shoreland program supports their ability to maintain and use this land as it has been used historically, as a walking path access to the beach area.
2. The applicant has not shown the impacts that the proposed project would have on the existing trees and other vegetation.
3. The Governor's Island Club has another beach that is more easily accessible to individuals that have walking disabilities.
4. The applicant has not demonstrated that the proposed project for which the variance is requested will not negatively impact abutters' property values.
5. The applicant has not demonstrated that there is a unique condition of the property that prevents the Governor's Island Club members from a reasonable use of the property.



This page of the Notice of Appeal is labeled *Proposed  
Improvement Plan TM 221-014.00 Governor's Island Club  
Brook Road / Governor's Island Gilford, Belknap County, New  
Hampshire* and is dated August 25, 2003.

THIS PLAN IS TOO LARGE TO SCAN

Department of Environmental Services  
Shoreland Protection Variance Application  
of Governor's Island Club, Lake Winnepesaukee,  
Tax Map 221, Lot No. 014, Block No. 000,  
Brook Road, Gilford, NH

MOTION FOR RECONSIDERATION OF DENIAL  
OF VARIANCE AND REQUEST FOR ADMINISTRATIVE HEARING  
WITH NOTICE TO ALL ABUTTERS

NOW COMES Governor's Island Club, applicant in the above-entitled matter, and requests Reconsideration of the Denial of the Variance in this matter, and further requests an Administrative Hearing on its application, with Notice of such hearing to all abutters, and submits the following reasons for its requests:

1. The Variance was denied without according applicant due process rights to a hearing, without the submission of any testimony, based solely on documents, and without a view as a part of the application.
2. The Findings #1 is not supported by any evidence and is erroneous in claiming that the historical use of Brook Road is as a walking path. The Superior Court order in Crafts vs. Governor's Island submitted as a part of applicant's request details the Superior Court findings based on testimony of the use of Brook Road along the entire length of Brook Road and along the Community Beach to the abutting property now of Hodgson. See copy of Superior Court Order attached. The finding that Brook Road is a walking path is in effect a taking of property rights without due process, and without compensation, and is clearly unconstitutional.
3. Finding #2 disregards the fact that brush has been cleared from this area for the

- past 70 years in order to permit the passage of motor vehicles. A view of the site by a department staffer many months prior to submission of variance request demonstrated the lack of impact on existing trees and other vegetation
4. Finding #3, is in effect an indirect finding that no hardship exist as a basis for denial of the variance. The fact that there is another beach available is immaterial to the determination of whether a variance should be granted as to this property. As stated Quimette v. City of Somersworth (1979) 119 NH 292, and other cases, the hardship relates to the particular property at issue. Reliance on the fact that there is another Community Beach located about a mile away from the property in issue adds a requirement which is not part of the hardship law of this state, and is an error of law.
  5. Finding #4 disregards the fact that Brook Road has been in this location for 70 years, and from 1950 to 1999 was a part of the area leased to a former abutter to maintain a dock which did not negatively impact property values any differently that the application for a drop-off or turn around. The ability of motor vehicle operators to turn around rather than back up along an abutter's property, or to drive unto the beach and turn around in front of another abutter's property demonstrates that there would be no negative impact, but rather a positive impact in the value of abutting properties. Further, the scope of the project will not affect property values as the same will not be visible to abutters.
  6. Finding #5 is erroneous as a matter of law as it applies a higher standard for granting variances than is required by New Hampshire case law. Gray v. Seidel

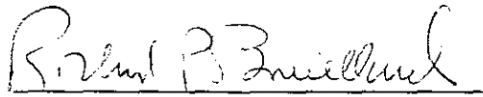
(1999) 143 NH 327. The standard is not that of a "unique condition of the property", but rather an interference with reasonable use of the property considering the unique setting of the property in its environment. Town of Plaistow Board. of Selectmen vs. Town of Plaistow Board of Adjustment (2001)

146 NH 263. Given the limited and narrow amount of land owned by applicant at this location available to provide safety by means of a drop off, or turn around for those lawfully entitled to use Brook Road, interferes with the reasonable use of the property.

WHEREFORE, applicant respectfully requests reconsideration of the denial of the variance, and that an administrative hearing be held after notice to abutters to permit the introduction and consideration of testimony and evidence.

Respectfully submitted  
Governor's Island Club  
By its attorneys  
Brouillard & Brouillard P.L.L.C.

Dated: October 24, 2003

By:   
Richard P. Brouillard  
16 Academy Street  
Laconia, NH 03246  
(603) 524-4450